

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
) CC Docket No. 94-129
Policies and Rules Concerning)
Unauthorized Changes of Consumers)
Long Distance Carriers)
_____)

OPPOSITION OF USTA TO JOINT PETITION FOR WAIVER

I. INTRODUCTION

The United States Telephone Association ("USTA"), by its counsel, opposes the joint petition for waiver in the above-captioned proceeding (the "joint petition"), which MCI WorldCom, Inc., filed on behalf of itself and several other parties (the "joint parties") on March 30, 1999.^{1/} The Commission should not waive its rules based on the third party administrator ("TPA") system proposed in the joint petition for addressing liability and related issues when consumers have been slammed.^{2/} Rather, the joint parties, incumbent

^{1/} The joint parties are MCI WorldCom, Inc., AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Telecommunications, Frontier Corporation, and Qwest Communications Corporation.

^{2/} The joint petition requests waiver of the following rule sections: 64.1100(c), (d); 64.1170; and 64.1180. *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129,

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local exchange carriers ("LECs"), and other interested parties should explore the potential for a workable TPA system for liability issues related to slamming, using the proposal of the joint petition as input. Doing so will minimize customer confusion and limit the costs incurred by consumers and the telecommunications industry alike.

II. ALTHOUGH THE CONCEPT OF A THIRD PARTY ADMINISTRATOR IS WORTHWHILE, THE COMMISSION SHOULD NOT ADOPT THE PROPOSAL IN THE JOINT PETITION

USTA does not oppose the concept of a TPA to address liability issues. To the contrary, the use of a TPA is well worth examining, particularly if it serves as (i) a clearinghouse for funds transferred among carriers to satisfy liability obligations and (ii) a useful body for investigating customer complaints. Indeed, as the Commission is aware, USTA's members have begun a process of evaluating TPA alternatives, including the proposal in the joint petition, and of meeting with representatives of the Commission and the joint parties regarding such alternatives.^{2/}

However, the specific TPA system proposed in the joint petition does not serve the public interest in its present form, and the Commission should not adopt it. The proposed TPA is no more than one starting point for discussing and resolving the numerous issues raised by any TPA for liability matters. Even though the proposed TPA system would have sweeping consequences for all telecommunications carriers, including incumbent LECs, and

^{2/}(...continued)

Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334 (rel. Dec. 23, 1998), *recon. pending*, ¶ 56 n. 179 and Appendix A.

^{3/} See, e.g., letter from Frank McKennedy, USTA, to Magalie Roman Salas, FCC, re oral *ex parte* presentation, CC Docket No. 94-129 (filed Apr. 12, 1999).

their users,^{4/} the joint petition was developed with no input from the incumbent LEC industry as a whole,^{5/} from consumers, from state regulators or other governmental agencies, or any other party. As such, the proposal is biased toward meeting the needs of the joint petitioners, rather than consumers or other carriers.

Incentives And Enforcement: Most fundamentally, the proposed TPA system does not adequately address customers' needs or reduce slammers' incentives to slam. Under any reasonable liability system, a slammer must be required to pay the costs it causes due to its activities. While the proposal in the joint petition ostensibly establishes conditions under which slammers -- proven "unauthorized carriers" -- must disgorge their revenues from slams, it provides no enforcement mechanism other than "monitoring and further dispute resolution of carrier-to-carrier payments."^{6/} At the same time, the joint petition would restrict LECs from taking the initiative to credit the accounts of customers who have been slammed,^{7/} or to seek recourse against slammers.^{8/} These limitations fail to address the needs of LECs or slamming victims.

The joint petition also works against stopping slamming by proposing to establish an elaborate mechanism under which slammers -- carriers determined to be "unauthorized carriers" -- can proceed against executing LECs "if the unauthorized carrier believes the

^{4/} See joint petition at 4 (the proposal "represents a sea change in carrier practices").

^{5/} Some of the joint parties have interests in incumbent LECs.

^{6/} See joint petition at 24-25, 28.

^{7/} See *id.* at 21.

^{8/} The proposed TPA would assume control of the process by which executing LECs could seek recourse to slammers for change charges. See *id.*

executing or submitting carrier to be at fault."^{9/} Although the joint petition styles this mechanism as "nonbinding dispute resolution," it is an invitation for slammers to attempt to blame their actions on executing carriers. Yet USTA is aware of few, if any, instances where an executing carrier's actions have had an effect on a slammer's unauthorized actions.

This mechanism is especially problematic because the proposal also would subject incumbent LECs, as executing carriers, to multiple obligations that could be the source of slammers' attempts to shift blame. Notably, if the joint petition were granted, incumbent LECs as executing carriers would be required to receive and implement instructions from the TPA to change customers back to their preferred carriers.^{10/} This is a major increase in the responsibilities and potential liability of LECs with little specific benefit to consumers. LECs also would be obligated to "hot transfer" complaints to the TPA, and to receive and implement instructions from the TPA to stop collections. In addition, LECs would be required to assist in ensuring that carrier change charges are correctly credited to users and billed to slammers.

Cost Of The Proposal: USTA is concerned about the cost of the TPA proposal, and which carriers would pay that cost. The joint petition provides no cost information at all. Although the joint petition speaks of an annual revenue assessment on participating carriers to support the TPA,^{11/} there is no estimate of the costs that must be borne or how the per-participant assessments would be determined and collected. While the joint petition states that the TPA will develop and implement a per-complaint processing fee "not to exceed

^{9/} See *id.* at 26-27.

^{10/} See *id.* at 20.

^{11/} See *id.* at 27.

\$50," to be levied on slammers, there is nothing in the joint petition to indicate whether such a charge realistically reflects the actual costs of processing such complaints, a cost that the slammer caused. At the same time, the joint petition seeks Commission review and regulation of the LECs' PIC change charges.^{12/} All of these issues obviously are of great concern to LECs, which, as noted above, would play a major role in the proposed TPA regardless of whether they formally "volunteer" to participate.

Operational Issues: Even if there were consensus that the powers and activities of the proposed TPA are desirable, which is not the case, the proposal should not be adopted at this time because of numerous operational uncertainties. The joint petition freely admits that creating the proposed TPA would be a major undertaking.^{13/} Yet the proposal provides little or no information about the scope or magnitude of the systems and mechanisms that LECs, the TPA, or other carriers would have to develop, place on line, and pay for. USTA is concerned that LECs would be required to develop multiple complex systems and links to complete all of the tasks that the joint petition proposes for them. Obviously, this would be a major new burden on small and large LECs alike. Moreover, the joint petition provides no information on how the rating and crediting described in the proposal would actually take place. Substantive dialogue between USTA's members and the joint parties is essential to exploring these issues.

Governance: Based on the joint petition's proposed governance structure, it defies reason to conclude that the proposed TPA would be neutral. The TPA's governing board would be controlled by interexchange carriers ("IXCs") and trade associations that either

^{12/} See *id.* at 20.

^{13/} See *id.* at 4.

represent IXCs or have substantial numbers of IXC members.^{14/} Because the board would have broad control over all aspects of the TPA, including many of the important policy, cost, and operational issues discussed above, this bias toward the IXC industry is unacceptable.

III. THE JOINT PETITION DOES NOT SATISFY THE COMMISSION'S WAIVER STANDARD

In light of the multiple deficiencies of the proposed TPA system described above, the joint petition does not meet the long-established standard that waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.^{15/} The unilateral action of the joint parties in devising their proposal is not such a special circumstance. A biased, expensive, and complex TPA system, such as that of the joint petition, does not serve the public interest.

Premature adoption of any TPA proposal, including that of the joint petition, is contrary to the public interest because of the expense for LECs and the customer confusion that would result. LECs already are faced with a major dilemma in this regard. LECs are incurring substantial expense in working to comply with the Commission's new liability rules pending their reconsideration and clarification.^{16/} At the same time, it would be wasteful

^{14/} As proposed, the board would include representatives of four trade associations, two of which represent IXCs, one of which represents CLECs -- many of which are IXCs, and one would represent incumbent LECs. Of the remaining 17 seats proposed for the board, no more than 8 could be held by LECs.

^{15/} See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

^{16/} See, e.g., petition for reconsideration of GTE; SBC's petition for reconsideration and clarification; petition for reconsideration of Rural LECs, CC Docket No. 94-129 (filed Mar. 18, 1999).

and counterproductive for the Commission to adopt the joint petition's flawed TPA proposal, thereby requiring LECs to expend undetermined large amounts in implementing that proposal as well. Moreover, customers -- and particularly slamming victims -- would face substantial confusion in reporting and obtaining relief from unlawful activities of slammers.

IV. CONCLUSION

The Commission should deny the joint petition for the reasons discussed above. Rather than rushing to adopt the joint petition's faulty TPA proposal, the Commission should permit the industry, consumers, state regulators, and others to explore the potential for a TPA for liability matters. Such a course will minimize customer confusion and will help telecommunications carriers avoid unnecessary costs and difficulty in combatting slamming.

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CERTIFICATE OF SERVICE

I, Mary-Helen Dove, hereby certify that on the 16th day of April, 1999, a true copy of the foregoing Opposition of USTA to Joint Petition for Waiver was served on the following:

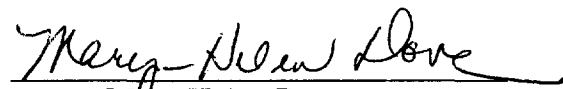
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